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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

L. R. POWELL, JR., AND HENRY W. ANDERSON,
RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND
SEABOARD AIR LINE RAILWAY COMPANY,
Petitioners,

vs.

JOHN GRANT LAUGHTER.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

MURRAY ALLEN,
Counsel for Petitioners.

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Petitioners,

vs.

JOHN GRANT LAUGHTER.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, L. R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Company, and Seaboard Air Line Railway Company, respectfully show:

Statement of the Case.

This action was begun by plaintiff, John Grant Laughter, respondent herein, against the defendants, L. R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Company, and Seaboard Air Line Railway Company, petitioners herein, to recover damages for personal

injuries alleged to have been sustained by him as the result of negligence of the defendants, while he was employed by defendants as trainman on one of defendants' freight trains running between Norlina, N. C., and Portsmouth, Va., on August 26, 1937. (Complaint, Sections 3 and 4, R. 2.)

The defendants denied liability and pleaded contributory negligence, assumption of risk, and fraud of plaintiff in obtaining employment, in that he made a false statement to the effect that he was not a minor, and that as a result of such fraud, he could not maintain an action under the Federal Employers' Liability Act, because he was not an employee. Defendants set out in the answer Rule 705 of their printed Rules and Regulations for the Government of the Operating Department, which provides that "Minors must not be employed in train, engine or yard service." (Amended Answer, R. 6.)

The case came on for trial at September Term, 1940, of the Superior Court of Warren County, before Nimocks, Judge Presiding, and a jury, and issues were submitted to and answered by the jury as follows:

1. Was the plaintiff injured by the negligence of the defendants, as alleged in the complaint?

Answer: Yes.

2. Did the plaintiff, by his own negligence, contribute to his injuries, as alleged in the answer?

Answer: Yes.

3. Did the plaintiff voluntarily assume the risk of injury, as alleged in the answer?

Answer: No.

4. What damage, if any, is the plaintiff entitled to recover?

Answer: $8,000.00.

5. Were defendants and plaintiff at the time of his injury engaged in interstate commerce?

Answer: Yes. (R. 14.)

From judgment on the verdict, defendants appealed to the Supreme Court of North Carolina. The appeal was heard at Spring Term, 1941, of the Supreme Court of North Carolina, and the judgment of the Superior Court was upheld (R. 121).

It was alleged by defendants that plaintiff, in his written application for employment filed with defendants on or about March 15, 1937, gave the date of his birth as "1916, Feb. 19," and orally stated to T. A. Norris, defendants' Train Master, by whom he was examined for employment, that he was twenty-one years of age. Defendants alleged that plaintiff was, in fact, born December 13, 1917, and was at the time of his alleged employment a minor; that plaintiff was familiar with defendants' rule against the employment of minors in train service and that he gave a false birth date and made a false statement as to his age for the purpose of deceiving defendants, in order to obtain employment in train service; that plaintiff's false statements were relied upon by defendants and as a result of such fraud and deceit he was put to work on one of defendants' trains (Amended Answer, R. 6).

In a Reply to Defendant's Answer (R. 10, 11), plaintiff admitted that he was guilty of fraud in obtaining his alleged employment, and attempted to justify such fraud by an allegation that he knew that defendants had habitually violated its rule in respect to employment of minors and he was told by defendants' yardmaster at Norlina, N. C., who knew that he was a minor, "to go ahead and tell the defendant's trainmaster that he was twenty-one years old."

This last allegation was not supported by evidence.

Defendants' allegations of fraud were fully supported by the testimony of plaintiff on cross-examination (R. 25), and by the testimony of T. A. Norris, trainmaster (R. 43).

Plaintiff, quite frankly, admitted that he stated to the trainmaster of defendants, to whom he made application for employment, that he was 21 years old, when he was only 19; that he put a false birth date in his written application, so that it would show him to be over 21 years of age; that he stated on his honor that his answers to the questions were correct; that he knew he "was supposed to be twenty-one" in order to obtain employment; that he knew this to be a rule of the railroad company and that he gave a false birth date in his application in order to obtain employment (R. 26, 27). Plaintiff was asked: "In order that you might get a position in train service you falsified the date of your birth in your application for employment? A. Yes. Q. And on the basis of your falsification you were put in train service? A. Practically right away, yes" (R. 27).

On redirect examination (R. 31), plaintiff testified:

> "Q. Counsel have asked you how you procured work, and the statement you made in respect to it; why did you make the statement to procure employment? A. I wanted to get a job with the Seaboard. Q. Why did you make the statement that you made, which has been shown you here and which you say you signed? A. I wanted a job."

T. A. Norris, trainmaster, testified: "Q. Would you or would you not have placed him at work on the Seaboard Air Line Railway if he had told you the truth about his age? A. If he had been under 21 I would not have employed him. Q. Did you put him to work because he told you he was over 21 years of age? A. Yes, that was among other requirements that I felt he met" (R. 44).

Errors Assigned.

Your petitioners further show:

That the Supreme Court of North Carolina erred in its construction of the Employers' Liability Act, approved by Congress on April 22, 1908, and amendments thereto, and by this error the Supreme Court of North Carolina decided against the rights set up and claimed by your petitioners under said statute. Said error is more particularly set forth as follows:

1. For that the Supreme Court of North Carolina, in construing the said Employers' Liability Act, erred in refusing to hold that, where the receivers of a railroad company have a rule prohibiting the employment of a minor in train service, plaintiff, who was familiar with said rule, and who at the time of his employment and at the time of his injury, was under twenty years of age, cannot recover damages under the said Employers' Liability Act for injuries sustained in train service when his employment in such service was secured by fraud, in that at the time of his application for employment he stated on his honor that he was over twenty-one years of age and gave a false birth date, which showed his age to be over twenty-one years, and when he would not have been employed if he had disclosed the fact of his minority.

The question presented was aptly raised by motions for judgment on the pleadings (Exception No. 5, R. 20), and for judgment as of nonsuit at the conclusion of plaintiff's evidence (Exception No. 15, R. 33) and at the conclusion of all the evidence (Exception No. 21, R. 59), and by exception to the charge of the trial court to the jury that plaintiff was, as a matter of law, an employee of defendants at the time of his injury (Exception No. 23, (R. 65), and the denial of these motions was duly assigned as error in the Supreme Court of North Carolina (Assignments of Error Nos. 5,

R. 96, 15, R. 98, 21, R. 99, and 23, R. 100). That the question was properly raised is conceded in the opinion of the North Carolina Supreme Court (R. 113).

Main Question in the Case.

Did the Supreme Court of North Carolina properly decide, in construing the Federal Employers' Liability Act, that plaintiff was entitled to recover as an employee within the provisions of said Act, where it appeared that the receivers of the railroad company had a rule prohibiting the employment of a minor in train service, with which plaintiff was familiar and that plaintiff, who at the time of his employment and at the time of his injury, while engaged in train service, was under twenty-one years of age, secured his employment in such train service by fraud in that at the time of his application for employment he stated on his honor that he was over twenty-one years of age and gave a false birth date, which showed his age to be over twenty-one years, when he would not have been employed if he had disclosed the fact of his minority.

This main question was presented to the Supreme Court of North Carolina on the following assignments of error:

1. Did the trial court err in refusing to grant defendants' motion for judgment on the pleadings?

2. Did the trial court err in refusing to grant defendants' motions for judgment of nonsuit at the conclusion of plaintiff's evidence and at the conclusion of all the evidence?

3. Did the trial court err in instructing the jury "as a matter of law that in the opinion of the court the plaintiff, on August 26, 1937, was an employee of the defendants engaged in interstate commerce, and as such employee had the legal right to institute this suit under the provisions of the Federal Employers' Liability Act?"

Your petitioners file herewith as an exhibit a certified copy of the transcript of record, including all proceedings in the Supreme Court of North Carolina, and submit under this cover a brief in support of their petition.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court and that the judgment of the Supreme Court of North Carolina may be reviewed and reversed by this Honorable Court.

MURRAY ALLEN,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

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JOHN GRANT LAUGHTER.

BRIEF FOR PETITIONERS.

Official Report.

The decision of the Supreme Court of North Carolina is officially reported in 219 N. C., at page 689, 14 S. E. (2d), at page 826.

Statement of Grounds of Jurisdiction.

The date of the judgment sought to be reviewed herein is May 31, 1941. The opinion upon which it is based was filed on the same date (R. 109, 121).

This action was tried and determined by the State courts under the Federal Employers' Liability Act of 1908.

The question presented arises under the Federal Employers' Liability Act and its determination requires the

construction and application of that Act (45 U. S. C. A., section 51-59).

Minneapolis, St. P. & S. S. M. Ry. Co. v. *Rock*, 279 U. S. 410;

Minneapolis, St. P. & S. S. M. R. Co. v. *Borum*, 286 U. S. 447.

In the opinion of the Supreme Court of North Carolina it is said:

> "All parties to this action concede that plaintiff must recover, if at all, under the provisions of the Federal Employers' Liability Act (45 U. S. C. A., sections 51-59) as interpreted by the Supreme Court of the United States. This was the theory of the trial in the Superior Court" (R. 113).

Statement of the Case.

The essential facts of the case are fully stated in the accompanying petition for certiorari and need not be repeated at this time. Any necessary elaboration of the evidence will be made in the course of the argument.

Specification of Errors.

The errors of which petitioners complain relate to the single question as to the correctness of the decision of the Supreme Court of North Carolina that plaintiff was entitled to recover as an employee within the provisions of the Federal Employers' Liability Act where it appeared that the receivers of the railroad company had a rule prohibiting the employment of a minor in train service, with which plaintiff was familiar and that plaintiff, who at the time of his employment and at the time of his injury, while engaged in train service, was under twenty-one years of age, secured his employment in such train service by fraud in that at the time of his application for employment he

stated on his honor that he was over twenty-one years of age and gave a false birth date, which showed his age to be over twenty-one years, when he would not have been employed if he had disclosed the fact of his minority.

This main question was presented to the Supreme Court of North Carolina on the following assignments of error:

1. Did the trial court err in refusing to grant defendants' motion for judgment on the pleadings? (Exception No. 5, R. 20; Assignment of Error No. 5, R. 96).

2. Did the trial court err in refusing to grant defendants' motions for judgment of nonsuit at the conclusion of plaintiff's evidence and at the conclusion of all the evidence? (Exception No. 15, R. 33; Assignment of Error No. 15, R. 98; Exception No. 21, R. 59, Assignment of Error No. 21, R. 99).

3. Did the trial court err in instructing the jury "as a matter of law that in the opinion of the Court the plaintiff, on August 26, 1937, was an employee of the defendants engaged in interstate commerce, and as such employee had the legal right to institute this suit under the provisions of the Federal Employers' Liability Act?" (Exception No. 23, R. 64, Assignment of Error No. 23, R. 100).

ARGUMENT.

It is settled by decisions of this Court that the right to recover in an action based upon the Federal Employers' Liability Act, under which this action was tried (Complaint, R. 2; Answer, R. 7; Issues, R. 14), must be determined by the language of the act as interpreted by this Court.

Toledo, etc., R. Co. v. *Allen*, 276 U. S. 165;
Southern R. Co. v. *Gray*, 241 U. S. 333;
Seaboard Air Line Ry. Co. v. *Horton*, 233 U. S. 492;
N. O. & N. E. R. Co. v. *Harris*, 246 U. S. 367.

In *Minneapolis, St. P. & S. S. M. Ry. Co.* v. *Rock*, 279 U. S. 410, it is held:

> "Where railroad employee obtained position by means of deception and fraud in procuring another to impersonate him and submit to physical examination, after he had previously been rejected because of his physical condition, he was without right to recover under the Federal Employers' Liability Act for injury, regardless of whether his physical condition contributed thereto."

In denying the right of Rock to recover for his injuries, the late Justice Butler says:

> "The carriers owe a duty to their patrons as well as to those engaged in the operation of their railroads to take care to employ only those who are careful and competent to do the work assigned to them and to exclude the unfit from their service. The enforcement of the act is calculated to stimulate them to proper performance of that duty. Petitioner had a right to require applicants for work on its railroad to pass appropriate physical examinations. Respondent's physical condition was an adequate cause for the rejection of his application. The deception by which he subsequently secured employment set at naught the carrier's reasonable rule and practice established to promote the safety of employees and to protect commerce. It was directly opposed to the public interest, because calculated to embarrass and hinder the carrier in the performance of its duties and to defeat important purposes sought to be advanced by the act.
>
> "The evils and disadvantages likely to flow from such impostures are the same in kind as those which invalidate attempts of common carriers by contract stipulations to escape liability for their own negligence in respect of duties essential to their public calling. In *N. Y. C. R. Co.* v. *Lockwood*, 17 Wall. 357, 21 L. Ed. 627, an action to recover damages by one injured while being transported on a railroad train in pursuance of

an agreement purporting to exempt the carrier from responsibility for the negligence of itself or its employees, the Court said (page 377): 'In regulating the public establishment of common carriers, the great object of the law was to secure the utmost care and diligence in the performance of their important duties —an object essential to the welfare of every civilized community. * * * It is obvious * * * that if a carrier stipulate not to be bound to the exercise of care and diligence, but to be at liberty to indulge in the contrary, he seeks to put off the *essential duties* of his employment.'

"Respondent's position as employee is essential to his right to recover under the act. He in fact performed the work of a switchman for petitioner, but he was not of right its employee, within the meaning of the act. He obtained and held his place through fraudulent means. While his physical condition was not a cause of his injuries, it did have direct relation to the propriety of admitting him to such employment. It was at all times his duty to disclose his identity and physical condition to petitioner. His failure so to do was a continuing wrong in the nature of a cheat. The misrepresentation and injury may not be regarded as unrelated contemporary facts. As a result of his concealment his status was at all times wrongful, a fraud upon the petitioner, and a peril to its patrons and its other employees. Right to recover may not justly or reasonably be rested on a foundation so abhorrent to public policy. *N. Y. C. R. Co.* v. *Lockwood*, supra; *Great Northern Ry. Co.* v. *Wiles*, 240 U. S. 444, 448, 36 S. Ct. 406, 60 L. Ed. 732; *Stafford* v. *Baltimore & Ohio R. R. Co.* (D. C.), 262 F. 807."

The principle of the *Rock* case was approved by this Court in *Minneapolis, St. P. & S. S. M. R. Co.* v. *Borum*, 286 U. S. 447, in which the two cases are distinguished.

The *Borum* case presented the question as to whether a switchman, 49 years old, who falsely represented himself to be 38 years old in his application for employment when

he understood that the railroad company had a rule against accepting men over 45 to work in train service, was an employee. It was held under the peculiar facts of the case that he was an employee and entitled to the amount awarded him by arbitrators for injuries caused by the railroad company's negligence.

In the course of the opinion, which was also written by Mr. Justice Butler, it is said:

> "When plaintiff made his application he was 49 years old and understood that defendant had a rule against accepting men over 45 to work in its train service. He falsely stated in his application that he was 38 years old, and, when submitting to a physical examination required of applicants for employment, he again so misrepresented his age. This statement was relied upon by the examining surgeon and was in part the basis of his finding and report that plaintiff was in good health and acceptable physical condition. It was a general practice of men, over the age specified in the rule, when applying for such work on the railroads of defendant and other carriers in the Northwest, falsely to represent their ages to be within the specified limit, and that practice was known to the defendant. The arbitrators were unable to find whether defendant knew plaintiff was over 45 years. They did not find, nor does the evidence require a finding, that defendant was deceived by plaintiff's false statements, or that it accepted his application because of or in reliance upon them. The application was not rejected within 30 days, and, under rule 22, must be deemed to have been finally accepted. Under the terms of the contract of hiring, defendant did not without more have the right to remove plaintiff from its service on account of such misrepresentation. Plaintiff worked for defendant as a switchman for about seven years and when injured was well under the age for retirement. His work was satisfactory. Neither his age nor his physical condition contributed to cause his injury."

After quoting from the *Rock* case, Mr. Justice Butler goes on to say:

> *"Here, defendant could not have regarded the difference between plaintiff's actual age and that stated in his application as having any material bearing upon the physical condition it required.* The arbitrators did not find, and the evidence does not show, that plaintiff's false statement of his age substantially affected the examining surgeon's conclusion that he was in good health and acceptable physical condition, or that, if he had given his real age, the surgeon would have found otherwise. *Indeed the surgeon's testimony shows that, save in exceptional cases, defendant, in accordance with its established rules, permits its switchmen to continue in the service until they are 65 years old without any physical examination after they are employed. Plaintiff's physical condition was not shown to be such as to make his employment inconsistent with the defendant's proper policy or its reasonable rules to insure discharge of its duty to select fit employees.* The evidence indicates that, under its own interpretation of rule 22 together with the schedule constituting the agreement between defendant and its switchmen, defendant, after the final acceptance of plaintiff's application, was not free to discharge him on account of the false statements as to his age.
>
> "It is clear that the facts found, when taken in connection with those shown by uncontradicted evidence, are not sufficient to bring this case within the rule applied in *Minneapolis, etc., R. Co.* v. *Rock, supra,* or the reasons upon which that decision rests." (Italics added.)

Defendants' printed rules, a copy of which was in plaintiff's possession, contained a rule, No. 705, which provided that "Minors must not be employed in train service" (R. 56). The purpose of this rule is clearly the protection of, first, the minor himself, who should not be exposed to the dangers of train, engine or yard service; second, the public,

whose persons and property should not be exposed to the dangers created by the employment of minors in such service; and, third, the other employees of the railroad, who should have the assurance that they will be protected from the thoughtlessness and carelessness of immature co-employees.

Plaintiff, quite frankly, admits that he stated to the trainmaster of defendants, to whom he made application for employment, that he was 21 years old, when he was only 19; that he put a false birth date in his written application, so that it would show him to be over 21 years of age; that he stated on his honor that his answers to the questions were correct; that he knew he "was supposed to be twenty-one" in order to obtain employment; that he knew this to be a rule of the railroad company and that he gave a false birth date in his application in order to obtain employment (R. 26, 27). Plaintiff was asked: "In order that you might get a position in train service you falsified the date of your birth in your application for employment? A. Yes. Q. And on the basis of your falsification you were put in train service? A. Practically right away, yes." (R. 27).

On redirect examination (R. 31), plaintiff testified:

"Q. Counsel have asked you how you procured work, and the statement you made in respect to it; why did you make the statement to procure employment? A. I wanted to get a job with the Seaboard. Q. Why did you make the statement that you made, which has been shown you here and which you say you signed? A. I wanted a job."

T. A. Norris, trainmaster, testified: "Q. Would you or would you not have placed him at work on the Seaboard Air Line Railway if he had told you the truth about his age? A. If he had been under 21 I would not have employed him. Q. Did you put him to work because he told you he was over 21 years of age? A. Yes, that was among other requirements that I felt he met" (R. 44).

This Court says that the Federal Employers' Liability Act "is intended to stimulate carriers to greater diligence for the safety of their employees and of the persons and property of their patrons," and in support of this statement *Minneapolis, etc., R. Co.* v. *Rock, supra,* is cited.

Jamison et al. v. *Encarnacion,* 281 U. S. 635.

The rule against the employment of minors in train, engine or yard service is entirely in keeping with the purpose of the Federal Act as stated by this Court and the facts in the instant case are illustrative of the importance of the rule as a safety measure. The plaintiff was found by the jury to be guilty of contributory negligence, which means that he not only failed to use the grab-iron, which had been placed on the end of the car in compliance with the Federal Safety Appliance Act, but thoughtlessly permitted his hand to be in a space of three inches between the neck of the drawhead and the car, which was the only place between the cars in which his hand could have been mashed.

Testimony of Bryant, Conductor, R. 35;
Testimony of Hiers, Inspector, R. 54;
Photographs of cars, R. 57;
Federal Safety Appliance Act, U. S. Code, Annotated, Title 45, Sec. 4;
Boehmer v. *Pennsylvania R. Co.,* 252 U. S. 496.

Plaintiff testified that he did not look to see whether there was a hand-hold on the end of the car; that he made no effort to put his hand on a hand-hold; that he did not try to find one (R. 30). He testified that he braced himself on the other car (R. 21). The evidence shows that on the end of the car against which plaintiff says he braced himself a hand-hold had been placed, in compliance with the Federal Safety Appliance Act, for the use of plaintiff while working between the cars.

It is generally recognized that a minor cannot be expected to exercise the same degree of care as an adult and that it is the duty of one employing a minor to give him special instructions as to the dangers of his employment.

It is fortunate that plaintiff's negligence did not occur at a time when it would have resulted in injury to his fellow employees, or injury to the person and property of the railroad company's patrons.

In *Holt* v. *Manufacturing Co.*, 177 N. C. 170, 98 S. E. 369, a boy 17 years old was injured while engaged in the operation of a rip-saw. In defining the defendant's duty to plaintiff, Walker, J., says:

> "The law puts upon a master, when he takes an infant into his service, the duty of explaining to him fully the hazards and dangers connected with the business and of instructing him how to avoid them. Nor is that all: the master will not have discharged his duty in this regard unless the instructions and precautions given are so graduated to the youth, ignorance and inexperience of the servant as to make him fully aware of the danger to him and to place him, with reference to it, in substantially the same state as an adult."

It is also said in this case: "Children, wherever they go, must be expected to act upon childish instincts and impulses—a fact which all persons who are *sui juris* must consider and take precautions accordingly."

Bellamy, Admr. v. *Lumber Co.*, 183 N. C. 433, 111 S. E. 773;

Ensley v. *Lumber Co.*, 165 N. C. 687, 81 S. E. 1010.

While it may not be important in the determination of this case, it is significant that the plaintiff was not only a minor at the time of his alleged employment, but that his minority continued up to and more than a year beyond the time of his injury. He was born December 13, 1917, and was injured

August 26, 1937. At the time of his injury he was less than twenty years of age.

Some years before the decision of this Court in the *Rock* case, *supra*, the Supreme Court of Appeals of Virginia held:

> "Where a minor by knowingly misrepresenting his age is accepted by a railroad as a student fireman, though the rules of the company prohibit the accepting of minors for train service, he is a *trespasser*, or at most a bare licensee, and not a servant, and the railroad is not liable for his death in a collision, since it would be liable only for injuries willfully or wantonly inflicted upon him."
>
> *Norfolk & Western Ry. Co.* v. *Bondurant's Admr.*, 109 Va. 515, 59 S. E. 1008.

The question of plaintiff's status as an employee raised by motions for judgment of nonsuit is also raised by motion for judgment on the pleadings (Exception No. 5, R. 20), and by exception to the court's charge to the jury that plaintiff was, as a matter of law, an employee of defendants at the time of his injury (Exception No. 23, R. 65).

An examination of the cases cited in the opinion of the Supreme Court of North Carolina will show that in none of them was the right of a minor to recover damages for injuries in train service involved, nor did it appear in any of them that employment had been obtained by fraud in misrepresentation as to age. None of the cases cited which involve the right of a minor to recover arose under the Federal Employers' Liability Act. The case of *Dawson* v. *Texas & P. Ry. Co.*, 123 Texas 191, 70 S. W. (2d) 392, cited by the Supreme Court of North Carolina, in which petition for writ of certiorari was denied by this Court (293 U. S. 580), bears no similarity to the present case. In that case a switchman made a false statement as to previous injury while employed by another railroad company. In *Texas & N. O. R. Co.* v. *Webster*, 123 Texas 197, 70 S. W. (2d) 394,

also cited by the Supreme Court of North Carolina, in which petition for certiorari was denied by this Court, plaintiff withheld information that he had employed attorneys to sue and had filed suit against a former railroad employer. This case is also clearly distinguishable from the *Rock* case and from the case at bar. The substance of the false statements made in the foregoing cases bears no relation to the safety of fellow employees and the travelling public, or to the protection of the employer's property and that of others in the employer's charge, and obviously the misstatements of the employees in no way affected the public policy referred to by this Court in *Minneapolis, St. P. & S. S. M. Ry. Co.* v. *Rock*, 279 U. S. 410.

We submit in conclusion that there is the same compelling reason for the reversal of the decision in the present case that existed in the *Rock* case, and we ask that our petition for writ of certiorari be granted.

Respectfully submitted,

MURRAY ALLEN,
Attorney for Petitioners.

(6)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

L. R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND SEABOARD AIR LINE RAILWAY COMPANY,

Petitioners,

vs.

JOHN GRANT LAUGHTER.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION AND MOTION TO SUBSTITUTE.

JOHN H. KERR,
DANIEL A. REED,
Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

L. R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND SEABOARD AIR LINE RAILWAY COMPANY,

Petitioners,

vs.

JOHN GRANT LAUGHTER.

RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondent, now A. B. Laughter, administrator of John Grant Laughter, respectfully showeth to the Court:

Statement of the Case.

This action was tried in the State Court of North Carolina under rules set forth by the Federal Employers Liability Act of 1908 (United States Code Title 45, section 51-59). Since the judgment of the Superior Court of Warren County, North Carolina, in which said case was tried, and

the affirmation of that judgment by the Supreme Court of North Carolina the original plaintiff, John Grant Laughter, has died, having died on August 26th, 1941, and his father, A. B. Laughter, the respondent in this action, has been appointed Administrator upon the estate of the said late John Grant Laughter by the Superior Court of Warren County, North Carolina, has duly qualified as such administrator, and a motion to substitute A. B. Laughter as party respondent is now on file in the court.

To those facts contained in petitioners' *Statement of Case* as set forth on pages 1 thru page 4 of the Petition, your Respondent desires to add the following facts:

On March 18, 1937, John Grant Laughter, now respondent's intestate, a resident of Norlina, Warren County, North Carolina, filed with the office of T. A. Norris, Trainmaster for Seaboard Air Line Railway Company, in Raleigh, North Carolina, an application for employment (R. 44-45). Such application contained the names of three people residing in Norlina, one of whom was a merchant, another the Chief of Police of Norlina, and the third an employee of the petitioner, to-wit, W. E. Duke, who is petitioner's general yard-master at Norlina.

Respondent's intestate, John Grant Laughter, was duly examined by the proper employees of the petitioner and found to be "*physically and mentally fit to do the work*" (italics ours) (R. 44-45). As a result of the application and examination of the respondent's intestate he was employed by the said petitioners in April of that year and went to work for petitioners as a trainman (R. 50) on a freight operating from Norlina, North Carolina, to Portsmouth, Virginia (R. 20). While working on such freight and while engaged in uncoupling a car at Boykins, Virginia, pursuant to instructions by the petitioners' conductor on said freight train, to set off on a sidetrack at Boykins a car, which par-

ticular work engaged in by respondent's intestate necessitated him going between cars for the purpose of uncoupling same, and while between the cars and so engaged in the work of uncoupling same, the train was suddenly moved, which movement on the part of the train caught the hand of the respondent's intestate between the drawhead and the bumper on the car and seriously and permanently injured the right hand and arm of respondent's intestate (R. 21-22).

At the time of his injury the respondent's intestate had been working for petitioner Railway Company for about six months (R. 22).

Respondent's intestate alleged that while he was engaged in the performance of his duties as trainman as an employee of petitioner railway company and was between the cars in performance of such duties, the train was negligently moved and his right arm was caught between the drawhead and the bumper of one of the cars, resulting in the injury of which he complained (R. 2-3).

As to the movement of the train and the whereabouts of respondent's intestate, at such time, the petitioner railway company's witness, Bryant (who was the conductor in charge of said freight train, R. 34), testified as follows:

> "I had a car for Franklin that was backed in on the other Franklin cars on the new track and then I was going to set my Boykins cars on the R. and T. main line that runs parallel, and when I was backing the Franklin car to set it off is when Mr. Laughter's hand got caught, the first move I made preparatory to setting the car off the train was backing into this storage track. After we backed the cars into the track Mr. Laughter waved them down to cut off the car.
>
> "Q. When Mr. Laughter waved them down what happened to the train, whether it stopped or not?
>
> "A. It stopped. At that time I was about forty feet behind. I was about at the end of the car that we were going to set off. There were some more cars back there

and if it backed up enough to hit them he would make the coupling, but it stopped before it got to those cars. I was about forty feet, about one car length from Laughter at that time. *I saw him go between those cars* italics ours) (R. 34)."

On page 22 of the record the plaintiff Laughter (respondent's intestate) testified as follows:

"Q. Did you know that the car was going to be moved when you went up there?

A. No, I do not know who signaled the engineer to move the car. *The conductor at that time was standing right behind me* (italics ours)".

Petitioner railway company set out in its answer its Rule #705, which provides that "minors must not be employed in train, engine or yard service". In reply to such defense respondent's intestate pleaded Section 5 of the Federal Employers' Liability Act, as amended (United States Code, Title 45, Section 55), which is as follows:

"Section 5. That any contract, rule, regulation or device whatsoever, the purpose or intent of which sh all be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void * * *"

(Reference also page 83, pamphlet entitled: *Compilation of Laws Relating to Mediation, Conciliation, and Arbitration Between Employers and Employees, Etc.* U. S. Government Printing Office, 1938)

Respondent's intestate admitted that he was not twenty one years of age when he made application for employment by the petitioner railway company (R. 26-27). Yet on that application he gave the names of three persons who resided in his home town (one of whom was an employee of petitioner company) as references (R. 45). Yet, the petitioner company made no effort or did not confer with these refer-

ences as testified by petitioner company's witness, Trainmaster Norris (R. 45).

Petitioner company in its *Amended Answer* (R. 6, *et seq.*) sets up as a *First Further Defense* the existence of and violation of its Rule #705, and devotes sixteen paragraphs to an elaboration of its contention that such violation thereof constituted the perpetration of a fraud by respondent's intestate upon petitioner company such as to vitiate the relation of master and servant under the Federal Employers Liability Act. Yet the record is replete with admissions from the lips of the petitioner company's witness, T. A. Norris, Trainmaster for petitioner company, that the petitioner company had abrogated this very rule with respect to the employment of minors as is fully borne out by the testimony set forth on pages 45, 46, 47 and 48 of the Record.

Your respondent respectfully calls the attention of this Honorable Court to the foregoing facts which were omitted from the *Statement of Case* as set forth in the petition filed in this cause. In this connection the attention of this Honorable Court is further respectfully called to that very comprehensive state of facts appended to the opinion rendered by the Supreme Court of North Carolina. (*Laughter* v. *Powell,* 219 N. C., pages 690, 691 and 692).

As to the questions of law raised in the Petition your respondent respectfully requests this Honorable Court to observe that the decision rendered by the Supreme Court of North Carolina (R. 113 through p. 120) is most exhaustive and that there is a citation therein of practically all the cases involving the question at issue. All of the members of that court concurred in that opinion.

Your respondent submits under this cover a brief in support of his contention that the judgment of the Supreme Court of North Carolina be not reviewed by this Honorable Court.

Official Report.

The decision of the Supreme Court of North Carolina is officially reported in 219 N. C. at page 689, 14 S. E. (2nd) at page 826.

Argument.

In both their petition and brief the petitioners insist that the "main question" in this case is whether the respondent's intestate was an employee of petitioners as would entitle him to the benefits of the provisions of the Federal Employers Liability Act. The petitioners contend that he was no such employee for the reason that at the time he obtained employment with petitioners he represented himself to be twenty-one years of age, when in truth he was a year or two younger. Respondent agrees with petitioners in their assertion that this is the "main question" in the case.

As a defense petitioners plead their Rule #705. In answer to such a plea your respondent takes the position that this particular defense urged by the petitioners, was not available in view of the positive terms of Section 5 of the Federal Employers Liability Act (United States Code, Title 45; Section 55). In addition—the petitioners' witness, Mr. Norris, admitted that in other instances of employment the petitioners had for all practical purposes abrogated this rule in that they had made no investigation of applicants' statements as to their ages (R. 45, 46, 47 and 48), nor had they made any as to respondent's intestate's statement as to his age (R. 46).

It was not alleged nor contended by the petitioners that the injuries received by respondent's intestate, as alleged in the complaint filed by the respondent's intestate, were in any way due to or attributable to his physical or mental immaturity or minority. In truth and fact the petitioners

admitted that respondent's intestate was "physically and mentally fit to do the work" for which he was employed to do by the petitioners. On this point the petitioners' witness, Norris, testified as follows:

> "I gave him an examination. * * * I put him to work. He passed the examination which I gave him. * * * A few weeks after I gave him the examination I put him to work. He was given another examination before I put him to work. * * * He passed alright. *I found him physically and mentally fit to do the work* (italics ours) (R. 44-45).

At the time of his injuries respondent's intestate had been working for petitioners "about six months" (R. 22). In the trial in the Superior Court of Warren County, North Carolina, petitioners placed upon the witness stand four men who, in addition to respondent's intestate, constituted the crew of the train on which respondent's intestate was employed at the time he received his injuries, to-wit, Bryant, the conductor (R. 34), Rozar, the engineer (R. 41), Satterwhite, a brakeman (R. 51), and Mason, the fireman (R. 52). From the lips of none of these witnesses, nor from any others offered by the petitioners, came one word to the effect that respondent's intestate was not a competent, reliable and careful employee of petitioners.

This case presents no new nor novel question to this Honorable Court, nor would it present a question of such character to many of the inferior courts of this country. The facts in the case at bar are identical with the facts in the case of *Minn. St. Paul R. R. Co.* v. *Borum*, 52 Sup. Ct. Rep. 612, decided by this Honorable Court on May 23rd, 1932. The only difference between the case at bar and the *Borum* case (*supra*), if such could be called a difference, is that in the case at bar a rule of the petitioners fixing the minimum age of employment is involved, while in the *Borum* case (*supra*) a rule of the petitioner company fixing

a maximum age of employment was involved. With respect to the principles involved there is no difference in the two cases.

As stated in the preceding paragraph this question has been passed upon by many of the inferior courts of the country, which decisions will be mentioned in this brief, and which, to a large extent, are exhaustively examined in the opinion of the Supreme Court of North Carolina (R. 113), which sustained by a unanimous court the judgment of the Superior Court of Warren County, North Carolina.

The petitioners rely upon the case of *Minn. St. Paul & S. S. M. Ry. Co.* v. *Rock*, 279 U. S. 310, and insist that they "have a decision of the Supreme Court of the United States directly in point on the question of the right of plaintiff to maintain this action." The respondent insists that by no stretch of the imagination can that authority govern the case at bar. Rock was an impostor and the court held that his "deception set at naught the carrier's reasonable rules and practices established to promote the safety of employees and protect commerce. It was directly opposed to the public interest because it calculated to embarrass and hinder the carrier in the performance of its duty and to defeat important purposes sought to be advanced in the Act".

Rock applied for work under his true name. He was found upon examination to be unacceptable to the carrier's rules and practices. Later, representing that he had not theretofore made an application, he applied again, but under a different name and secured another man to impersonate him and in his place to submit to the required physical examination, and by these means Rock deceived the railway company and thereby secured employment in which he later suffered injuries. The Court said, in part—"As a result of Rock's concealment his status was at all times wrong and a fraud upon the petitioners and a peril

to its patrons and its employees. Right to recover may not justly or reasonably be rested on a foundation so abhorrent to public policy" (*Rock* case, *supra*).

In *Minn. Etc. R. R. Co.* v. *Borum*, 286 U. S. page 447, 52 Sup. Ct. Rep. 612, the petitioners attempted to have this Honorable Court deny Borum's recovery based upon the authority of the *Rock* case, *supra*. The only difference in the facts disclosed in the *Borum* case, *supra*, and the case at bar is that Borum represented when he was employed that he was 38 years of age, when he was in truth 49 years of age. He passed the examination and the report of the surgeon showed that he was in good health and acceptable physical condition. Respondent's intestate, John Grant Laughter, was nearly 20 years of age, but reported his age to be 21 years. He was examined by the petitioners and found to be in good condition physically and mentally. The identity of respondent's intestate was at no time concealed, nor did respondent's intestate attempt to conceal his identity for he gave, as references three men who lived in his own home town, one of whom was an employee of petitioners, to-wit, yardmaster at Norlina for Seaboard Air Line Railway Company.

In *Hart* v. *Railroad*, 205 N. Y. 37, 98 N. W. 4439, the court held that there being no allegation of plaintiff's injury being due to his minority or immaturity the defendant could not raise the question that the plaintiff was not an employee on account of his minority or immaturity.

In *Lake Shore, Mich. Etc. R. R. Co.* v. *Baldwin*, 19 Ohio Circuit Court Reports page 338, the court held that "the rule of the railroad company requiring its employees to be 21 years of age is a reasonable rule, but we cannot agree with the counsel that the false statement of Glenn Baldwin as to his age made him a trespasser upon the cars of the defendant company".

In *Lupher* v. *Railway Co.*, 81 Kansas 586, the Court held that "the fact that a brakeman obtains his position by

falsely stating that he was of full age when he was in fact but 18 years old (a rule of the company forbidding the employment of minors in that capacity) does not relieve the company from its obligation to exercise the same care for his protection that is due any other employee, or disentitle him to recover for any injury due to the want of care and not occasioned by his minority or immaturity".

The injuries received by respondent's intestate had no causal connection with either his minority or immaturity, nor was there any such allegation in the pleadings of the petitioners nor in the proof petitioners offered at the trial in the Superior Court of Warren County, North Carolina.

The respondent again respectfully calls the attention of this Honorable Court to the opinion of the Supreme Court of North Carolina in the case at bar (R. 113), and submits that this opinion contains a complete and comprehensive analysis of all the authorities that bear upon the principles involved in the case at bar, which authorities sustain the contentions of the respondent.

The contract of employment which the respondent's intestate, John Grant Laughter, had with the petitioners was a voidable one only, and the petitioners could have discharged respondent's intestate at any time. This is the only right the petitioners could have exercised, certainly there is no legal authority disclosing any decision of our courts which would allow the petitioners to negligently injure such an employee and not be liable for such injury.

In support of his contentions in the case at bar the respondent cites the following cases and those cited therein, namely:

Minn., St. Paul, etc., R. R. Co. v. *Borum*, 286 U. S. 447;
Laughter v. *Powell, Receiver, etc.*, 219 N. C. 689;
Lupher v. *Railway Company*, 81 Kansas 586;
Lake Shore, Mich., etc. R. R. Co. v. *Baldwin*, 19 Ohio Circuit Court Reports 338;
Hart v. *Railroad*, 205 N. Y. 37, 98 N. W. 4439.

In conclusion this respondent submits that there has been no error committed in the trial of the case at bar; that the decision of the Supreme Court of North Carolina in the case at bar should be sustained, and that the petition for writ of certiorari should be dismissed.

WHEREFORE your respondent respectfully prays that a writ of certiorari be not issued out of and under the seal of this Honorable Court to the end that the judgment of the Supreme Court of North Carolina be reviewed.

Respectfully submitted,

JOHN H. KERR,
DANIEL A. REED,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

L. R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND SEABOARD AIR LINE RAILWAY COMPANY,

Petitioners,

vs.

JOHN GRANT LAUGHTER.

MOTION TO SUBSTITUTE A. B. LAUGHTER, ADMINISTRATOR, AS RESPONDENT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Since rendition of judgment in the foregoing action, the plaintiff, John Grant Laughter, has died, and now comes A. B. Laughter, father of said John Grant Laughter, deceased, who having duly qualified as Administrator of the estate of said John Grant Laughter, respectfully requests that he be substituted as respondent in this action.

JOHN H. KERR,
DANIEL A. REED,
Attorneys for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 559

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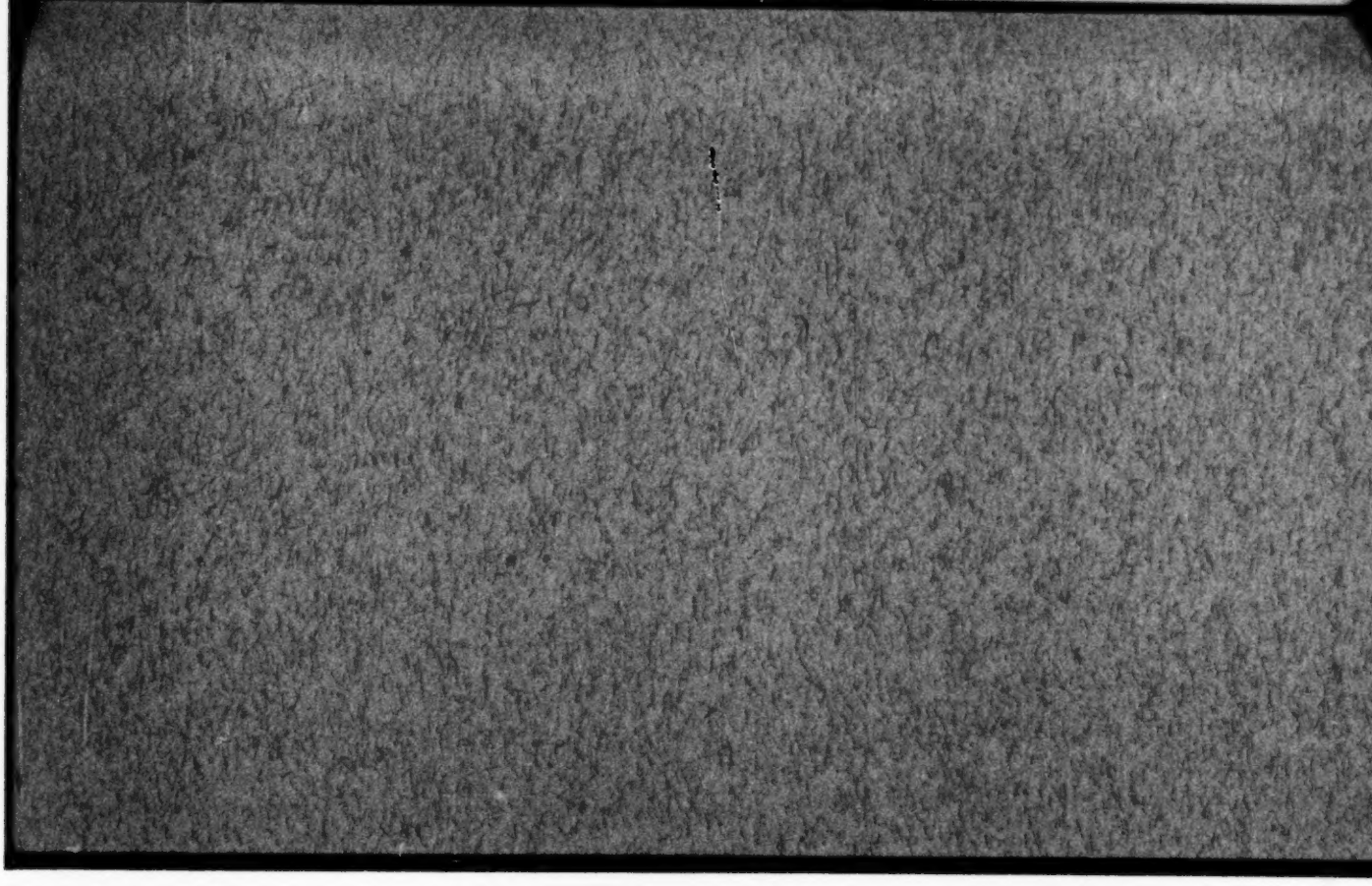
Petitioners,

vs.

JOHN GRANT LAUGHTER.

REPLY BRIEF OF PETITIONERS

MURRAY ALLEN,
Counsel for Petitioners.



SUPREME COURT OF THE UNITED STATES

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L. R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AND SEABOARD AIR LINE RAILWAY COMPANY,
Petitioners,

vs.

JOHN GRANT LAUGHTER.

REPLY BRIEF OF PETITIONERS

The position of the petitioners on this petition for a writ of certiorari is fully discussed in the principal brief, and this reply brief is for the purpose of calling the Court's attention to the following statement appearing on page 5 of respondent's brief:

> "Yet the record is replete with admissions from the lips of the petitioner company's witness, T. A. Norris, Trainmaster for petitioner company, that the petitioner company had abrogated this very rule with respect to the employment of minors as is fully borne out by the testimony set forth on pages 45, 46, 47 and 48 of the Record."

An examination of the testimony on the pages of the record referred to will show that the statement that the rule against the employment of minors in train service had been abrogated by the petitioners is not correct. The same contention was

made when this case was presented to the Supreme Court of North Carolina and it is ignored in the opinion of that Court.

Petitioners' witness, T. A. Norris, Trainmaster, was questioned with respect to three parties in an effort to show the abrogation of the rule—Mr. Buck Duke, Jr., a Mr. Currin and a Mr. Pridgen. (Rec., pp. 45, 46, 47 and 48.)

With respect to Mr. Buck Duke, Jr., the witness Norris testifies on page 46 that he (Buck Duke, Jr.) stated that he was 21 years of age. He was asked: "Do you know Mr. Buck Duke, Jr., is now working for the Seaboard, and when he was employed was under 21 years of age?" He answered, "I don't know his age." There is no evidence in the record that Buck Duke, Jr., was under 21 years of age at the time of his employment.

It appears on page 46 of the record that a young man by the name of Currin was permitted to send telegrams while learning to become a telegraph operator. He was doing this without pay. The witness Norris states positively that Mr. Currin "has not been employed. He is learning and hopes to get a position some day." It is quite clear that if Currin had been employed as a telegraph operator, which is not true, this would not have been a violation of the rule against employment of minors in train service.

With respect to Mr. Pridgen, it appears on page 47 of the record that he told the witness Norris, Trainmaster, that he was 21 years of age, and there is no evidence in the record that this was not correct.

On redirect examination, the witness Norris, Trainmaster, testified: "I have nothing to do with employing telegraph operators. I have nothing to do with employing firemen, only giving them the train rule examination. They do not make application to me for any type of employment. Telegraph operators do not make application to me for employment." (Rec., p. 48.) This witness was asked: "Q. Have you ever since you have been trainmaster employed in the train service

any man or boy that you knew to be under 21 years of age? A. Not to my knowledge." (Rec., p. 48.)

We submit that the testimony referred to in respondent's brief fails to support the contention that the rule against employment of minors in train service had been abrogated. To the contrary, it appears that it has been strictly enforced.

Respectfully submitted,

MURRAY ALLEN,
Counsel for Petitioners.

COMMERCIAL PRINTING COMPANY, RALEIGH, N. C.